

David K. Byers  
Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, AZ 85007-3327  
Phone: (602) 452-3301  
Projects2@courts.az.gov

## ARIZONA SUPREME COURT

In the matter of:	)	
	)	
PETITION TO AMEND RULE 47.3	)	Supreme Court No. 18-_____
OF THE RULES OF PROCEDURE	)	(expedited consideration
FOR THE JUVENILE COURT	)	requested)
CONCERNING CHILD REMOVAL	)	
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 47.3 of the Rules of Procedure for the Juvenile Court as proposed in Appendix A. The proposed amendments modify the rule to implement amendments to A.R.S. § 8-821 enacted by [Laws 2018, Chapter 191, SB 1395](#) and to address other issues identified since this Court adopted Rule 47.3.

### **I. Background and Purpose of the Proposed Rule Amendments.**

#### **A. Standard of Proof**

Proposed amendments to Rule 47.3(B), (D)(1) and (4), would adopt the change in the standard of proof from “reasonable cause” to “probable cause” made

in A.R.S. § 8-821(B) by the legislation. No other legislative amendment adopted affects Rule 47.3.

## **B. Consideration**

In Appendix A clarifying language in subsection (C)(4) is proposed to provide flexibility for written or oral submission of information consistent with procedures used for search warrants.

## **C. Findings and Order – Content**

Subsection (D)(1) requires that the judicial officer state a factual basis for the removal for each child. The amendment proposed in Appendix A would allow this to be accomplished by reference to the factual basis provided in the application.

## **D. Notice**

Subsection (D)(3) requires that the applicant provide the parent or guardian a copy of the application and order that grants temporary custody when the temporary custody notice (TCN) is provided. Recently DCS raised the need to not disclose the application and order when disclosure would compromise a criminal investigation. As authority, DCS cited A.R.S § 8-807, which provides for disclosure of confidential information, with the following exception in subsection (L):

(L) Except as provided in subsection M of this section, before it releases records under this section or section 8-807.01, the department shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of a person who reports child abuse or neglect and to protect any other person if the department believes that disclosure of the DCS information would be likely to endanger the life

or safety of any person. The department is not required by this section to disclose DCS information if the department demonstrates that disclosure would cause a specific, material harm to a department investigation. The department is not required by this section to disclose DCS information if, in consultation with the county attorney, the county attorney demonstrates that disclosure would cause a specific, material harm to a criminal investigation or prosecution.

Further, A.R.S. § 8-471, the Office of Child Welfare Investigations statute, states that:

- E. On initial contact with the parent, guardian or custodian of a child who is the subject of an investigation pursuant to this section, provide the parent, guardian or custodian with the allegation received by the department. This paragraph does not require the department to disclose details or information that would compromise an ongoing criminal investigation.

Currently, when DCS removes a child without a court order, A.R.S. § 8-823 requires that DCS provide a temporary custody notice (TCN) with one or more general reasons for removal checked. The application required by Rule 47.3(C) requires a specific factual basis that supports reasons for removal. DCS notes in some cases this factual basis contains information that could compromise a criminal investigation. The proposed amendment to subsection (D)(3) recognizes DCS authority to determine not to disclose the application for a reason provided by the cited statutes or other provisions of state and federal law.

## **II. Preliminary Comments.**

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

### **III. Request for Emergency Adoption.**

The 2018 legislative session regular effective date of August 3, 2018 applies to the language changes made by SB 1395 in the standard of proof and proposed in subsections B, (D)(1) and (D)(4) in Appendix A. However, the statutory change in A.R.S. § 8-821 that authorized the process provided by Rule 47.3 was adopted by Laws 2017, Ch. 282 with a July 1, 2018 effective date. This is the effective date needed for the rest of the proposed amendments. Rather than adopt these proposed amendments with these different effective dates, petitioner recommends that the Court recognize that the change in the standard of proof from “reasonable cause” to “probable cause” is not a change that will have legal significance in the month between these effective dates.<sup>1</sup> Therefore, petitioner requests expedited adoption of all of the proposed rule amendments effective July 1, 2018 with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

Respectfully submitted this 18th day of May, 2018.

---

<sup>1</sup> See *In the Matter of the Appeal In Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 284, 674 P.2d 836, 838 (1983).

By /S/  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, Arizona 85007

# Appendix A

## Rule 47.3 Court Authorized Removal

**A. Purpose.** On application under oath by a child safety worker, a child welfare investigator, or a peace officer, the court will determine whether to authorize the applicant to take ~~ex parte~~ temporary custody of a child.

**B. Burden of Proof.** The applicant shall have the burden of stating explicit facts that provide ~~reasonable grounds~~ probable cause to believe:

1. ~~ex parte authorization of~~ temporary custody of the child is clearly necessary to protect the child from suffering abuse or neglect; and
2. remaining in the child's current home is contrary to the welfare of the child.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the facts stated must support a finding that ~~ex parte authorization of~~ temporary custody is necessary to prevent imminent physical damage or harm to the child.

### C. Procedure.

1. **Application.** A child safety worker, a child welfare investigator, or a peace officer may apply for authorization to take ~~ex parte~~ temporary custody of the child by submitting an application in writing to one of the judicial officers designated by the presiding judge of the superior court in Maricopa County to receive and respond to applications under this rule. The application must state:

- (a) the professional qualifications of the applicant,
- (b) the particular reasons each child is presently or imminently in danger of abuse or neglect,
- (c) a detailed account of circumstances that require ~~ex parte~~ authorization of temporary custody including the facts that support the reasons given,
- (d) efforts made to determine the availability of less restrictive voluntary options, including care by a parent or relative, that effectively removes or controls the danger, and
- (e) the identity and description of each child ~~to be placed in ex parte~~ for whom temporary custody authorization is sought.

Additionally, under 25 C.F.R. § 23.113(d), if there is reason to know the child is an Indian child, the applicant must provide this information. The information that should be provided under 25 C.F.R. § 23.113(d) should be provided in the dependency petition.

2. **Form.** The application must be submitted in a written format approved by the Administrative Director of the Supreme Court. If an applicant is unable to submit a written application using an approved written format, the applicant may apply for ~~ex parte~~ authorization of temporary custody by recorded oral statement or by other means acceptable to the court made under oath. The recorded oral statement or other means of communication must otherwise comply with this rule.

3. **Evidence.** Evidence presented in support of an application for ~~ex parte~~ authorization of temporary custody may include evidence which is reliable hearsay, in whole or in part.

4. **Consideration.** As soon as possible after receipt of an oral statement or a written application, a designated judicial officer will consider the application *ex parte*. The judicial officer may question the applicant and any witnesses ~~orally~~. Any additional information shall be submitted ~~or recorded~~ in writing or by a recorded oral statement made under oath.

#### **D. Findings and Order.**

1. **Content.** The order must state whether there is ~~reasonable grounds~~ probable cause to believe that ~~ex parte~~ authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child as required by Rule 47.1(A). An order granting an application must ~~include~~: (a) identify the a-factual basis for the determination for authorizing temporary custody of each child, and (b) ~~the identity and description with reasonable particularity of~~ identify and describe each child with reasonable particularity to be placed in ex parte temporary custody.

Additionally, for an Indian child, under [25 C.F.R. § 23.113\(b\)\(1\)](#) the court must find that ~~ex parte~~ authorization of temporary custody is necessary to prevent imminent physical damage or harm to the child.

2. **Form.** If the applicant and judicial officer are not in each other's physical presence, the judge may sign the order authorizing ~~ex parte~~ temporary custody using an electronic signature to serve as the original order, orally authorize the applicant to sign the judge's name on the order, or sign an electronically transmitted version of the original order which is then deemed to be the original. The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.



**3. Notice.** The applicant must provide the parent or other custodian a copy of the ~~ex parte temporary custody~~ application and the order authorizing ~~ex parte~~ temporary custody when ~~and the~~ Temporary Custody Notice (TCN) is provided as required by law unless the applicant determines disclosure would cause harm under A.R.S. §§ 8-471, -807(L), or other provisions of state or federal law, and the applicant provides notice of the order in the TCN.

**4. Execution and Duration.** The applicant may execute the order until there is a material change in the factual basis for the ~~reasonable grounds probable cause~~ determination and within ten calendar days of issuance of the order. The temporary custody authorized by the order will expire after 72 hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in rules 50 and 51.

**5. Filing:** The applicant must file the application and order when the dependency petition is filed.